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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. ~~1825~~ 135

FREDERICK WALZ,

Appellant,

against

TAX COMMISSION OF THE CITY OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

FREDERICK WALZ
Appellant pro se
60 East 42nd Street
New York, N. Y. 10017

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1415

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against

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APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

Attorneys for Appellee erroneously assert in their motion to dismiss appeal (pp. 1, 2) that some of the questions presented were not raised in the Courts below. They do not attempt to point out such irregularity.

Appellant, in his complaint (Transcript of Record, p. 6) alleged that the real property tax exemption of religious organizations in New York City is in violation of the First and Fourteenth Amendments of the Federal Constitution. This contention was maintained in all Courts (Transcript of Record, pp. 25, 28, 33, 38 and 39), citing *Everson* in every instance.

Appellant set forth his status in his complaint (Transcript of Record, pp. 5, 6, 22) that he is a real property taxpayer of the City of New York, that he is a Christian and not a member of any religious organization, rejecting them as hostile. This Court has held, *U. S.* v. *Seeger,* 380 U.S. 172:

> "The Congress recognized that one might be religious without belonging to an organized church."

In his reply affidavit on the motion for summary judgment (Transcript of Record, p. 22) appellant quoted the Founder of Christianity:

> "Wherever two or three are gathered in My name, there am I." Matt. 6:18, 20.

That the questions raised are substantial is shown by the following quotations from opinions of this Court:

Everson v. *Board of Education,* 330 U.S. 15, 16:

> "The 'establishment of religions' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

McGowan v. *Maryland,* 366 U.S. 442:

> "It (this Court) has found that the First and Fourteenth Amendments afford protection against religious establishments far more extensive than merely to forbid a national or state church."

The Court then quoted the above opinion in the *Everson* case. This opinion was reaffirmed in *Torcasso* v. *Watkins,* 367 U.S. 492, 493; in *McCollum* v. *Board of Education,* 333 U.S. 203, and in *Abington* v. *Schempp,* 374 U.S. 217. In *Abington* the concurring opinion of Douglas, J. included:

> "The most effective way to establish any institution is to finance it" (p. 229).

Finally, *Everson* v. *Board of Education,* 330 U.S. 31, 32:

> "The Amendment's purpose was . . . to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion."

CONCLUSION

The motion to dismiss the appeal should be denied.

June 9, 1969.

Respectfully submitted,

FREDERICK WALZ
Appellant pro se